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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 CR 472 (KPF)

5 NADINE JAZMINE WADE,

6 Defendant.

7 -----x
8 New York, N.Y.
9 December 4, 2023
10 9:00 a.m.

11 Before:

12 HON. KATHERINE POLK FAILLA,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

18 BY: MATTHEW J. KING

DINA McLEOD

MICAH FERGENSON

Assistant United States Attorneys

19 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

Attorneys for Defendant

20 BY: ROBERT A. SOLOWAY

DAVID M. STERN

21 ALSO PRESENT:

22 JAYDA FOOTE, AUSA Paralegal Specialist

23 MAYERLIN ULERIO, Defense Paralegal
24
25

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record beginning with the government.

4 MR. KING: Good morning, your Honor.

5 Matthew King for the government, joined at counsel's
6 table by my colleagues Micah Fergenson, Dina McLeod, and Jayda
7 Foote, a paralegal from our office.

8 THE COURT: Good morning to each of you. Thank you.

9 Good morning, Mr. Soloway.

10 MR. SOLOWAY: Good morning, your Honor.

11 Robert Soloway for Nadine Wade, joined at counsel
12 table by David Stern and by our paralegal, Mayerlin Ulerio.

13 THE COURT: Good morning to each of you.

14 Mr. Soloway, I'll note I'm having a little difficulty
15 hearing your microphone.

16 MR. SOLOWAY: I just turned it on, Judge. Sorry. I
17 thought I pressed it.

18 THE COURT: You may have pressed it off. That's fine.

19 All right. So I received some filings yesterday. We
20 should talk about them.

21 From the government, who is going to be speaking to
22 this issue?

23 MR. KING: I assume the adjournment question, your
24 Honor?

25 THE COURT: That one, sir.

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1 MR. KING: Mr. Fergenson will.

2 THE COURT: I'm sure he appreciates it.

3 Mr. Fergenson, my question to you is this: in your
4 response, what you talk about -- I just want to be sure I have
5 the pages, the page correctly, I believe it's on the first
6 page -- there is apparently 15,000 pages of discovery produced
7 in the recent past. What it says is -- I'm looking about five
8 lines from the bottom -- the government has marked only a very
9 small subset for use in its case in chief, three exhibits in
10 total.

11 What I'm trying to figure out, sir, whether that is an
12 indication of what you have marked from the 7,000 pages that
13 relate to different portion of the investigation or whether
14 that's what you've marked out of the totality of materials that
15 are cited in the defense letter of yesterday.

16 MS. FERGENSON: The former, your Honor, the 7,000
17 pages.

18 THE COURT: OK. How many exhibits have you marked out
19 of the totality of these materials, sir?

20 MS. FERGENSON: Of the 15,000, your Honor?

21 THE COURT: Yes, sir.

22 MS. FERGENSON: I'm not certain of that number.
23 Certainly more than the three.

24 THE COURT: Well, thanks. OK.

25 MS. FERGENSON: Just to give your Honor some sense of

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1 it, things that we have obtained, paper records we have
2 obtained from primarily banks, your Honor, there is maybe eight
3 banks involved. Those consist of, perhaps, we got an
4 additional monthly statement that was missing from our
5 production, perhaps we got some additional withdrawal slips or
6 deposit slips and check images. Those would be either, you
7 know, tacked on to exhibits that had been marked already and
8 incorporated or just added as a new paper exhibit for that
9 particular bank account. For the bank records, that is the
10 sort of thing we have received.

11 We have also received some exhibits from other
12 witnesses we have been speaking with, like some of the romance
13 scam victims where they found, you know, from years prior they
14 found some photographs that they sent to the online alias or
15 that the online alias sent to them. You know, we've gotten
16 some -- just to give your Honor a sense of the categories, we
17 have gotten some from other sort of businesses. We've got some
18 additional FedEx records, for example. Nothing terribly
19 voluminous, involving, you know, one is three records for a
20 Florida address, another is, you know, about 50 FedEx records
21 for an address in New Jersey.

22 Those things we have received and we have marked.

23 THE COURT: Let me direct your attention, then, sir,
24 to something on the second page of the defense request, and
25 that is there is something PNC Bank call audio, TD Bank call

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1 audio, and transcriptions of earlier audio calls.

2 Now on the transcriptions front, I'm sure you'll tell
3 me the Capital One materials were produced earlier. I guess
4 what I'm trying to figure out is, I don't know what these are
5 and I don't know whether these are coming in or the government
6 is seeking to bring them in at trial.

7 MS. FERGENSON: Yes, your Honor.

8 So in speaking with the bank witnesses, one of the
9 things we learned after following up with them about it was
10 that they could have recorded calls. They checked again and
11 they did have, in some instances, many recorded calls.

12 TD Bank had 100 recorded calls. They produced those
13 to us. We reviewed them, we have produced them promptly to the
14 defense, we reviewed them, we have marked --

15 THE COURT: May I imagine that Ms. Wade shows up
16 nowhere anywhere on these calls.

17 MS. FERGENSON: No, your Honor. They are calls with
18 Ms. Wade.

19 THE COURT: Thank you. I see.

20 MS. FERGENSON: Now, but a couple things to note
21 about, just taking the TD Bank example.

22 THE COURT: Please.

23 MS. FERGENSON: There are 100 calls. We reviewed them
24 very quickly, produced them immediately, and reviewed them very
25 quickly. And we have marked maybe a subset of nine or ten that

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1 just fall in the time period from May 28, 2020, through about
2 June 10, 2020.

3 And just, again, the number 100 obviously is a lot and
4 the hours of audio is a lot, but many of these calls are
5 extremely anodyne. Many of the length of the calls is just
6 because she is on hold with a bank customer service rep waiting
7 to, you know, while they are looking into her account or
8 verifying her account. That's a lot of the time spent on these
9 audio recordings.

10 And so at the end of the day, what the government is
11 seeking to use is a very small portion of the 100.

12 THE COURT: I believe the defense would respond that
13 it, nonetheless, has to listen to all 100 to determine, if
14 you're using them, are you using them in the totality or using
15 excerpts from them, sir?

16 MS. FERGENSON: I think we will offer the totality of
17 the calls we're using, your Honor, for the sake of the jury.
18 And, your Honor, we will probably try to skip ahead to the most
19 significant portions.

20 THE COURT: All right. There won't be from your --
21 you will argue there isn't a Rule 106 issue, a completeness
22 issue, although they may argue that there are additional calls
23 that are necessary to place those in context.

24 MS. FERGENSON: I think that's fair, your Honor.

25 THE COURT: OK. All right. So this call audio, this

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1 is, I did not appreciate that this was of Ms. Wade herself.

2 All right. Are there other category of materials that
3 you would like to speak to, sir?

4 MS. FERGENSON: No, your Honor, unless the court has
5 additional questions.

6 THE COURT: I have asked the questions I have.

7 Thank you.

8 Mr. Soloway, am I turning to you or someone else on
9 your team to discuss this?

10 MR. SOLOWAY: That would be me, your Honor.

11 THE COURT: Sir, thank you very much.

12 Mr. Soloway, I was in this weekend, obviously
13 preparing for trial, and I did not hear -- earlier in the week
14 of last week I received a request from your team for the
15 appointment of a third person to the trial team, so I granted
16 that immediately upon its receipt. And one of the proffered
17 reasons, sir, was because you were addressing discovery that
18 was being produced by the government before trial.

19 So, please, I was surprised to now see this
20 adjournment request. I'm more surprised because I received it
21 three o'clock yesterday, a motion in limine. There was no hint
22 until 11 o'clock last night, and even then I wasn't given a
23 courtesy copy of the document. There was nothing to suggest
24 that there was adjournment request coming. So I got ready for
25 bed thinking I was ready for this trial.

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1 What happened between three o'clock yesterday and 11
2 o'clock yesterday to change your mind?

3 MR. SOLOWAY: Your Honor, I would say that the
4 application that we made, first of all, was made reluctantly
5 except this, to say that it was made reluctantly doesn't mean
6 that we didn't feel that we had to make it. We resisted making
7 it.

8 The government identified conversations that we had
9 with them.

10 THE COURT: Yes, and concessions you extracted from
11 them in exchange for not making the motion. That's why, sir,
12 please recall, no, you never even hinted to me that you were
13 making adjournment request.

14 Did you?

15 MR. SOLOWAY: No.

16 THE COURT: Right. So I'm allowed to be surprised,
17 and very surprised that you did so at literally the eleventh
18 hour.

19 MR. SOLOWAY: Yes. We think, Judge, of course that
20 the eleventh-hour nature of the motion is driven by the way
21 that things progressed from November 15 until the very present,
22 and the representations and the reliance on representations
23 that things would be coming, especially in the initial
24 conversations with the government when we did say we would not
25 be making a motion for a continuance and that you should turn

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1 over the 3500 material based on that representation.

2 Then on the Monday following that weekend, the
3 government did that. But it's not going to surprise you to
4 hear me say that our position is that the discovery kept on
5 coming. And not only did it keep on coming, but it increased
6 in volume, and it increased in volume in ways that made it
7 impossible toward the very end, when on November 29 and
8 November 30 respectively we received the TD Bank calls and the
9 PNC call audios.

10 And we, as the government has indicated to you, the
11 calls are all with our client. The fact that the government is
12 presenting some of them doesn't mean that there isn't much on
13 those calls that is going to be helpful to us if we know about
14 it.

15 For the government to give us things and say whatever
16 they say about it in the nature of either it's tangential or
17 it's not central to our case, when they give us things, we have
18 to look at them. We have to -- and that includes the 7,000
19 that they characterize as tangential.

20 And it's also noteworthy, Judge, that the government
21 really hasn't identified a reason for requesting all of these
22 records late. I mean, they also don't even mention in their
23 response to this court the fact of these audio calls, which
24 they have selected groups of from the four banks, and we are
25 not in a position to know their content.

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1 We are trying and at the last -- so the eleventh hour
2 is when our motion was made, but that's because things never
3 changed and didn't for the good, but continued to worsen in
4 terms of our ability to keep up during the period of time when
5 it's our role and our expectation that the bulk of the Rule 16
6 material that we have to deal with, we have. And that our job
7 during the runup to the trial is to read the 3500 material and
8 prepare our in-court presentations, not to incorporate new
9 materials into the Rule 16 universe of things we have, because
10 it's complicated to do that.

11 Even when you receive additional bank records that are
12 just bank records, when you have, for example, a universe of TD
13 Bank records and then one of the things that happened is that
14 we received, you know, another bunch of TD Bank records, and we
15 had to figure out where they went and how they fit in and what
16 was new in them.

17 And, you know, it's really not something that we felt
18 at the eleventh hour, but not because of us at the eleventh
19 hour, that could be ignored responsibly as defense lawyers
20 representing someone on trial because we want to walk in here
21 knowing that we have command of the material that is pertinent.
22 And that applies to the material that the government is
23 representing is tangential. Because to us, we want to look at
24 it. We think we know what they are talking about, but we are
25 reading it and, you know, they gave it to us.

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1 So really that's it, Judge. I'm not going -- unless
2 you have other questions for me, our view really is that we, in
3 this last two weeks, have been robbed of the ability to do what
4 we have to do, which is to prepare our in-court presentations
5 by these things that the government -- and this is what they
6 did. I'm not --

7 THE COURT: You're not suggesting that they produced
8 them to you any later than upon receipt, correct?

9 MR. SOLOWAY: 100 percent correct.

10 THE COURT: All right. You just feel they started too
11 late getting these materials.

12 MR. SOLOWAY: That is correct, and for us to
13 meaningfully review them. If we meaningfully review them, then
14 we can't -- we can't be ready to come into court and start
15 dealing with the witnesses in a meaningful way, having to make
16 that kind of choice because of the way that the government did
17 what they did. Again, without, you know, these materials
18 are -- they might say some thousands of them are not material,
19 but they are material. Things that were given to us in the
20 last two to three weeks are extraordinarily material, and that
21 is particularly true of the calls, which are the most difficult
22 things for us to manage and are very, very important.

23 I could give examples of why they are important, but I
24 don't think -- and the government knows why they are important.

25 THE COURT: They are.

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1 OK. I'll accept that. I presume your colleague is
2 back at the office listening to them now?

3 MR. SOLOWAY: You're referring to Mr. Anderson?

4 THE COURT: I am.

5 MR. SOLOWAY: No. He's been asked to work on the
6 writing projects that -- we had the motion and the motion, of
7 course, for the state of mind that he wrote over the weekend.

8 But he's not reviewing discovery. That's not what we
9 brought him on to do, your Honor.

10 (Counsel confer)

11 Yes. I mean, you know, Mr. Anderson, he's a very,
12 very good lawyer, but we were scrambling to try to find
13 somebody. He's got a lot of things that he's also doing right
14 now. This is, for everybody, the eleventh hour and we weren't
15 really -- we weren't able to find somebody to join as a third
16 attorney, the trial team, such as, you know, in an equal sort
17 of way.

18 But he was able to devote the time we asked for a
19 limited number of hours. He was able to devote a certain
20 amount of time, but not to become involved in the way that, you
21 know, a third attorney on the case would ordinarily be part of
22 the trial team and here in court with us every day. He wasn't
23 able to do that. That's what I can say about that.

24 THE COURT: All right. Thank you.

25 Mr. Fergenson.

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1 MS. FERGENSON: Yes, your Honor. Just not to belabor
2 the points.

3 THE COURT: No, I want you to belabor the points.
4 This is very important.

5 MS. FERGENSON: The discovery was produced on a
6 rolling basis over a several-week period and the defense has
7 had that discovery well in advance, to understate the point of
8 their adjournment request last night.

9 THE COURT: They've said to me, sir, that they
10 received a significant amount of call audio on the 29th of
11 November and the 1st of December.

12 MS. FERGENSON: Yes, your Honor. That's correct.

13 THE COURT: OK. And is it approximately 16 hours from
14 TD Bank and four and a half hours from PNC?

15 MS. FERGENSON: I actually don't know. I have not
16 measured it that way, your Honor. I know it is about 100 calls
17 from TD Bank and around 40 from PNC.

18 THE COURT: All right. I mean, what I want --

19 Sir, don't sit down just yet. Thank you.

20 MS. FERGENSON: Yes.

21 THE COURT: Mr. Fergenson, what I want you to address
22 is Mr. Soloway's point that, irrespective of the good faith of
23 the government's production, irrespective of the work that you
24 did and the quickness with which you turned it over, they have
25 an obligation to review it. Of course they cannot take your

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1 word that it would be -- that it is exculpatory inculpatory.
2 However, the government is describing it as tangential, and
3 that that is the problem that they are having.

4 Now I'm aware, as we're all aware, that there will be
5 two days this week where we're not sitting. All we have to get
6 through today is jury selection. That there are two days of
7 witnesses that you have already identified for the defense and,
8 perhaps, for which these calls might not be necessary. But I
9 want to understand, because if what you're going to tell me is
10 that, fear not, Failla, because Thursday and Friday we're free
11 and they can work on it then. Then that may be part of an
12 answer, but I just want to hear from you.

13 When do you expect them to listen to these materials?

14 MS. FERGENSON: Well, your Honor, I guess we expected
15 them to listen to them the same time we were listening to them,
16 which is right after we produced them.

17 And in terms of the witness order that we provided,
18 yeah, I mean, to give you -- just to give you who we were
19 planning to call on Tuesday and Wednesday.

20 THE COURT: I believe I have your exhibit, sir, yes.

21 MS. FERGENSON: So we are planning to call Citibank
22 and Capital One, whose calls were produced earlier and
23 transcriptions for those calls have also been produced, for the
24 ones that are marked as exhibits. And we were also planning to
25 call TD Bank in the first two days.

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1 Now, TD Bank's exhibits were also marked and the
2 transcripts for those exhibits were also produced already.

3 THE COURT: I'm asking the question. Is there a
4 witness that you could sub into the TD Bank witness this week?

5 MS. FERGENSON: Yes, your Honor. I think we could
6 confer about that, just to confirm, but I think we could move
7 TD Bank to the following week.

8 THE COURT: OK. What else do you want me to know,
9 sir?

10 MS. FERGENSON: Just one moment, your Honor.

11 THE COURT: Of course.

12 (Counsel confer)

13 MS. FERGENSON: And just to complete the picture for
14 your Honor, the PNC, we are planning to call PNC witness that
15 would be the following week. So both TD and PNC and their
16 calls would be addressed in the second week.

17 THE COURT: I hesitate to ask this question, sir, and
18 this is the product of my own concerns about my trip later in
19 the week.

20 Mr. Felix is going to be called; yes?

21 MS. FERGENSON: Yes, your Honor.

22 THE COURT: The second week.

23 MS. FERGENSON: Yes, your Honor.

24 THE COURT: I assume he's a day or a two-day witness;
25 no?

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1 MS. FERGENSON: Not for us, your Honor.

2 THE COURT: Fair enough. OK. Fair enough.

3 I would just think the sting drawing is pretty
4 significant, but maybe I misperceive him.

5 All right. Thank you.

6 (Pause)

7 Thank you very much for your patience. I am not
8 adjourning the trial. I am not precluding the use of this
9 material. I have considered the parties' submissions, I have
10 considered the volume of materials, and I have considered the
11 type of materials that were produced. I recognize that the
12 materials were produced promptly upon their receipt, and I
13 understand, therefore, that the defense had the materials this
14 weekend and had all weekend to review them.

15 I also understand the prior history of adjournment
16 request discussions between the parties and the concessions
17 that were given to the defense as a result of them. It is
18 noteworthy, although not dispositive, there was no notice to me
19 at any time before last night. I also note that the defense
20 has three members on the team. They can allocate the work
21 among the three of them. They do not all need to be in the
22 court at the same time, and if it is something that they need,
23 we can try and work to get them a breakout room or something
24 here in this courthouse during the trial day. If they ask me
25 for one, I'll do what I can. I can give them my own jury room

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1 at 618, and we can give them that.

2 But, more importantly, there are only three trial days
3 of this week, and none of them are going to implicate all of
4 these materials. Today is all jury selection, nothing else,
5 and two later days in the week that can be used for preparing
6 for trial and considering these materials. And the government
7 is going to move the TD Bank witness to next week so that they
8 have four days, effectively, to consider how, if at all, these
9 materials affect their questioning of the TD Bank and PNC Bank
10 witnesses.

11 With that, I am denying the request. So we're today
12 picking a jury and going forward with trial.

13 There was a second issue, which was the motion in
14 limine. Did the government wish to be heard on that, Mr. King?

15 MR. KING: Yes, your Honor.

16 THE COURT: All right. There is not a written
17 response, sir?

18 MR. KING: There is not yet a written response, your
19 Honor. We wanted to address that issue with you now before
20 putting in a submission, in part, because it's the government's
21 view that we're not in a position to respond in writing, nor is
22 the court from our view in a position to rule on the motion as
23 it is.

24 That is because the defense has moved to admit in mass
25 500 pages worth of text messages and e-mails between their

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1 client and Mr. Felix, which probably conservatively amount to
2 3,000 or so statements of the defendant.

3 And in their motion, they proffer two bases for that,
4 but don't with any specificity identify the statements in that
5 whole group that they wish to admit, nor do they proffer any
6 specific argument for the admissibility of those statements.

7 Absent the defense providing a specific basis for the
8 statements they seek to admit, the government feels that it
9 can't respond to the motion, nor can the court rule on it
10 effectively. The defense has flipped the burden of
11 admissibility of saying to the government, go through these
12 3,000 statements and identify which one of them do you believe
13 are not admissible. That is, of course, not how the process
14 should go.

15 It's the burden of the proponent of the evidence,
16 which is here the defense, to lay out and convince your Honor
17 why they are admissible. So what the government would suggest
18 is that your Honor tell the defense to submit a supplemental
19 motion laying out further proffers of the admissibility of
20 whatever specific statements within that large group of
21 material they, in fact, wish to offer so that the government
22 can respond and tee up for your Honor, in a specific a fashion
23 as possible, what the disputes about admissibility are.
24 Because there may not be.

25 The government may not dispute admissibility of

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1 certain statements within this larger group, but as it's been
2 presented to the government and the court, that work cannot be
3 done by the government. And so we would suggest that your
4 Honor ask the defense to submit a supplemental motion by the
5 end of the day tomorrow so that the government can then present
6 a written response addressing the proffers of admissibility on
7 particular statements.

8 THE COURT: All right. Mr. Soloway, am I hearing from
9 you, or Mr. Stern?

10 MR. SOLOWAY: From me, your Honor.

11 THE COURT: All right. Sir, my concern is that, as I
12 understood, you were seeking to admit wholesale these text
13 messages and they cover many, many different topics. Some
14 personal, some more business-related. But it's hard for me. I
15 have not had a situation, sir, where as a lawyer or as a judge,
16 where someone has sought to admit the totality, sort of the
17 totality of communications, e-mail or text, with a party and
18 said, here, discern state of mind from this.

19 I have certainly had instances in which someone has
20 sought to admit a particular message, particular communication
21 saying that irrespective of its truth or falsity, it's being
22 admitted for the state of mind for the effect on the listener.
23 But I don't understand that that is what you have.

24 So may I please have a better understanding of why
25 months of communications come in, in a single foul swoop?

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1 MR. SOLOWAY: We believe, your Honor, that the
2 entirety of the communications that exist -- and there were
3 others that no longer do exist -- but what does exist, we made
4 available to the government, and they made available to us in
5 discovery a set of direct messages or chats between Mr. Felix
6 and our client.

7 Our position is that the entirety of those materials
8 are relevant, and they are relevant on the issues that we have
9 identified in the motion. I really don't think that -- and our
10 client, just so your Honor knows and the government knows, our
11 intention is to put or to propose to put, of course, the
12 entirety, the entire universe of these materials in, but to
13 create excerpts that we want the jury to specifically or
14 particularly hear.

15 We think the jury should be able to hear or listen to
16 or read -- read, actually -- the entirety of them in their
17 entirety. They are the story of the state of mind that we
18 expect or hope to elicit that explains the -- well, you know,
19 to put it in the way that it is, that our client was in love
20 with Abuchi Felix.

21 I know we have said this in the papers, because it's
22 our position that being in love with someone is related to
23 trusting them. And the government, of course -- and I know
24 this was mentioned in the papers, but I'll just hit on it or
25 refer to it again. it is incredibly directly relevant to the

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1 issue of conscious avoidance to have the jury understand what
2 was going on here and the specific granular exchanges that
3 existed that pertain to what Ms. Wade's state of mind was.

4 If you look at the entirety of these materials --

5 THE COURT: I have.

6 MR. SOLOWAY: Thank you, Judge.

7 -- there is never going to be a part of it that isn't
8 relevant to what our defense is here.

9 THE COURT: OK. I understand that. I'm not yet
10 disputing the relevant --

11 No, let me finish, sir. Thank you.

12 I'm not ready to dispute the relevance of the
13 materials, although I'm not sure each text message can itself
14 be relevant. You're saying all of them as a group are
15 relevant. But relevant doesn't equate to admissibility. And
16 for many of these messages, it seems to me that what matters is
17 their truthfulness.

18 So this idea that they can be admitted for state of
19 mind is difficult because, for example, the November 16, 2017,
20 text about money laundering, that only matters to her state of
21 mind if you believe what she is saying.

22 So I'm not sure this idea -- that's the problem I'm
23 having. When I think of state of mind, what you're telling me,
24 irrespective of the truth or falsity, it is the effect on the
25 listener. It is what the listener or the listener is saying in

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1 response to hearing something or doing and saying where truth
2 or falsity doesn't matter.

3 But here, from many of the texts, I think the truth
4 does matter, and it's indicative or you would be relying on it
5 for its truthfulness. I'll tell you right now, they are not
6 coming in as a whole group. So if there are some excerpts that
7 you think should come in either because they are indicative of
8 sort of impeachment for Mr. Felix when one day he testifies,
9 I'll listen to you on that.

10 And if your client is testifying, I may have to
11 revisit the whole issue. But even then I don't think I would
12 let them all in. I just don't see -- I've never had someone
13 say, in order to understand my client, you have to just admit
14 all of her text messages with someone. I just don't see that
15 here.

16 MR. SOLOWAY: Well, I think, you know, the way we
17 would propose, for example, having the jury -- the jury's
18 relationship with these materials, in our view, would be
19 partially limited by our intention to create excerpts --

20 THE COURT: No, but you're --

21 MR. SOLOWAY: -- as exhibits.

22 THE COURT: Stop.

23 You are asking me to admit all of them. I'm not going
24 to admit all of them. Full stop.

25 So if there are excerpts that you wish to admit, we

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1 can talk about that. But I'm not admitting months and months
2 of text messages as a single exhibit, even if you're then going
3 to excerpt further from them. You're not saying to me the jury
4 will only be pointed to some of them, doesn't help me if you're
5 seeking to admit them all. I have figured that out in my years
6 on this planet, sir. So let's try again.

7 MR. SOLOWAY: I think we will --

8 I hear your Honor.

9 THE COURT: OK.

10 MR. SOLOWAY: And we will go back and respond
11 appropriately to what I've heard from your Honor just now.

12 THE COURT: OK.

13 MR. SOLOWAY: So, thank you, your Honor.

14 THE COURT: All right. Then that's where we are.

15 All right. I guess we're waiting for a jury. Let me
16 just check in with my deputy.

17 I don't think they are ready. They are not ready yet.
18 You have a few moments to gather your thoughts together and, I
19 don't know, work on things. If defense counsel wants a room,
20 we'll try and find you a room.

21 Do you want me to start looking?

22 MR. SOLOWAY: I think we're going to 100 percent take
23 you up on that and have somebody in there, yes, working away.

24 THE COURT: We'll do that right now.

25 Thank you. Be back when we can.

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MR. SOLOWAY: Thank you, your Honor.

(Jury selection followed)